

CHAPTER NO. 800

HOUSE BILL NO. 3148

By Representative McCord

Substituted for: Senate Bill No. 3076

By Senator Ramsey

AN ACT to protect water resources and to amend Chapters 8 and 11 of Title 69 and Section 66-11-210 of the Tennessee Code Annotated.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 69, Chapter 8, is amended by deleting Section 69-8-105 in its entirety and adding Sections 2 through 10 of this Act as a new part.

SECTION 2. This part shall be known and may be cited as the "Tennessee Water Resources Information Act".

SECTION 3. The general assembly recognizes that in other states the withdrawal of ground water has caused the lowering of the ground water table and that there is potential for ground water or surface water withdrawals to impact water uses in Tennessee. Therefore, it is necessary and prudent to institute a system of registration so that adequate information is obtained to document current demand for water and to project growth in that demand as applicable to Sections 4 through 10.

SECTION 4. As used in this part, unless the context otherwise requires, these terms shall have the following meanings.

(a) "Board" means the water quality control board established pursuant to T.C.A. §69-3-104.

(b) "Commissioner" means the commissioner of the department of environment and conservation, the commissioner's duly authorized representative and, in the event of the commissioner's absence or a vacancy in the office of commissioner, the deputy commissioner of environment and conservation.

(c) "Person" means any individual, corporation, company, limited liability company partnership, association, group, utility district, federal, state or local government agency, or any combination of them.

(d) "Source" means a location where surface or ground water is available, including, but not limited to, a water well, cave, spring, stream, river, lake, or impoundment.

(e) "Withdraw" means to take water from any source on a regular or recurring basis by means of an intake structure, pipe and pump that diverts water away from a source, or by any other conveyance with or without the use of suction. This does not include nonrecurring withdrawals including, but not limited to, the filling of a swimming

pool from a residential water well or accidental withdrawals caused by failure of pipes or equipment.

SECTION 5.

(a) Except as provided in subsections (a)(2) and (a)(3) of this section, no person shall withdraw ten thousand (10,000) or more gallons of water per day from a surface water or a groundwater source unless the withdrawal is currently registered with the commissioner. The commissioner shall accept a recognized method of measuring the quantities of water withdrawn.

(1) Any person who causes such a withdrawal, or proposes such a withdrawal shall annually register such water withdrawal with the commissioner on forms provided for the purpose. For water wells drilled pursuant to T.C.A. §69-11-101, the initial withdrawal may be registered by the well driller, on behalf of the person causing or proposing the withdrawal, by providing the required information, including an estimate of the withdrawal amount, with the notification of the intent to drill a well and by verifying and/or modifying the information when the report of well driller is delivered to the commissioner. Subsequent withdrawals from water wells shall be registered annually by the person who causes such a withdrawal, or proposes such a withdrawal

(2) A person may withdraw water for emergencies involving human health and safety without having first registered the withdrawal, provided it is not done on a regular or recurring basis.

(3) A person may withdraw water for agricultural purposes without having registered the withdrawal. If a person withdraws water for agricultural purposes and another purpose, the water used for agriculture shall not count towards the calculation of whether the withdrawal exceeds ten thousand (10,000) gallons per day. For purposes of this part, "agricultural purposes" shall mean use in the production or harvesting of an agricultural product, including, but not limited to, irrigation of crops, nursery stock production as defined at T.C.A. §43-1-112, and watering of poultry or livestock.

SECTION 6. The commissioner has the power to:

(a) Annually collect and compile water quantity data and other quantity information, including data and information on uses of water and well data, and to develop registration and other forms for these purposes; if requested and if it is deemed necessary by the commissioner to protect trade secret information as defined in T.C.A. §47-25-1702, the commissioner shall keep such trade secret information confidential;

(b) Accept forms and data provided by a municipality which has adopted home rule pursuant to Article 11, Section 9 of the Tennessee Constitution, or any county operating under a county charter form of government, as part of the annual registration and/or data collection process;

(c) Pursuant to Section 3, make inspections and investigations, collect samples pursuant to a water quantity inspection or investigation, carry on research, or take such

other action as may be necessary to carry out the provisions of this part, rules and regulations issued pursuant thereto, and any orders which the commissioner may issue;

(d) Enter or authorize the commissioner's agents to enter at all reasonable times upon any property other than dwelling places for the purpose of conducting investigations or studies or enforcing any of the provisions of this part;

(e) Bring suit in the name of the department for any violation of the provisions of this part, rules and regulations, and orders of the commissioner seeking any remedy therein provided and any other statutory or common law remedy therein provided;

(f) Assess civil penalties for violation of any provision of this part or any rule, regulation, standard adopted or order issued by the commissioner pursuant to this part;

(g) Issue orders as may be necessary to secure compliance with the provisions of this part, as well as the rules and regulations adopted pursuant to this part; and

(h) Exercise general supervision over the administration and enforcement of this part and all rules and regulations promulgated thereunder.

SECTION 7.

(a) The board has the authority to promulgate the rules, other than rules establishing fees, that it deems reasonable and necessary to effectuate the purposes of this part, in accordance with the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5.

(b) The board has the authority to conduct and make all rulings in contested cases under this part.

SECTION 8.

(a)

(1) Whenever the commissioner has reason to believe that a person is withdrawing water without having a valid registration, or has supplied false or materially misleading information to the department or has violated any order or rule promulgated pursuant to this part, the commissioner may cause a written administrative order to be delivered to the alleged violator. The order shall specify the provision of this part or rule or order alleged to be violated, the facts alleged to constitute a violation thereof, and may order that corrective action be taken within a reasonable time to be prescribed in such order, and shall inform the violators of the opportunity for a hearing.

(2) Any such order shall become final and not subject to review unless the person or persons named therein request by written petition a hearing no later than thirty (30) days after the date such order is delivered; provided, that the board may review such final order on the same grounds upon which a court of the state may review default judgments.

(b) Except as otherwise expressly provided, any order issued by or under authority of this part may be served on any person by the commissioner or any person designated by the commissioner, by certified mail, or in accordance with Tennessee statutes authorizing service of process in civil actions.

(c) Any person who violates or fails to comply with any provision of this part, any order of the commissioner or board issued pursuant to this part or any rule, regulation, or standard adopted pursuant to this part shall be subject to a civil penalty of not less than fifty dollars (\$50.00) nor more than seven thousand five hundred dollars (\$7,500.00) per day for each day of violation. Each day such violation continues is a separate violation.

(d) In addition to the commissioner bringing an action in any court of competent jurisdiction, a civil penalty may be assessed in the following manner:

(1) The commissioner may issue an assessment against any person responsible for the violation;

(2) Any person against whom an assessment has been issued may secure a review of such assessment by filing with the commissioner a written petition setting forth the grounds and reasons for the objections and asking for a hearing before the board in the matter involved. If a petition for review of the assessment is not filed within thirty (30) days after the date the assessment is served, the violator shall be deemed to have consented to the assessment and it shall become final; and

(3) Whenever any order or assessment has become final because of a person's failure to appeal the commissioner's order or assessment, the commissioner may apply to the appropriate court for a judgment and seek execution of such judgment. The court, in such proceedings, shall treat the failure to appeal such order or assessment as a confession of judgment in the amount of the assessment.

(4) In assessing a civil penalty, the following factors may be considered:

(A) The harm done or potential for harm to the public health or the environment;

(B) The harm done or potential for harm to the regulatory program by the violation;

(C) The economic benefit gained by the violator;

(D) The amount of effort put forth by the violator to avoid or to remedy the violation; and

(E) Any unusual or extraordinary enforcement costs incurred by the commissioner.

(e) Any hearing or rehearing brought before the board shall be conducted in accordance with the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5.

(f) The commissioner may also initiate an action in any court of competent jurisdiction seeking a judgment for any unpaid penalties.

(g) When there is reason to believe that a person has violated, or is about to violate, any of the provisions of this part or orders issued thereunder, the commissioner may institute proceedings in the appropriate court for injunctive relief.

(h) Any person intentionally violating, or failing, neglecting, or refusing to comply with, any of the provisions of this part or rules or regulations commits a Class C misdemeanor. Each day upon which such violation occurs is a separate offense.

SECTION 9.

(a) The commissioner and the board shall encourage and support regional water planning whenever possible. In the future, if there is a specific appropriation of state or federal funds for regional water supply planning, the board may require regional water supply planning and may provide incentives to encourage such regional planning, using the rulemaking authority under this part for so long as such specific appropriation is in effect. Among other criteria, state agencies are authorized to consider regional planning and regionalization efforts when awarding grants, making loans or funding projects.

(b) The general assembly recognizes that the Duck River Development Agency and the Mississippi, Arkansas, Tennessee Regional Aquifer Study are potential models for regional planning and modeling efforts. By January 1, 2003, the Duck River Development Agency and the Mississippi, Arkansas, Tennessee Regional Aquifer Study shall report to the general assembly their findings and lessons learned. All state agencies are encouraged to cooperate with these agencies.

SECTION 10. The commissioner shall appoint a technical advisory committee, the number of members to be determined by the commissioner, that shall advise the commissioner on the status of the state's water resources and future planning efforts. The technical advisory committee shall be composed of representatives of federal, state, and local agencies and of appropriate private organizations, including not for profit organizations. No member of this committee is entitled to a salary for duties performed as a member of the committee. No member is entitled to reimbursement for travel and other necessary expenses incurred in the performance of official duties.

SECTION 11. Tennessee Code Annotated, Title 69, Chapter 11, is amended by deleting the phrase "water well" wherever found and inserting in lieu thereof the word "well".

SECTION 12. Tennessee Code Annotated, Section 69-11-101, is amended by deleting it and substituting instead the following:

(1) "Board" means the board of ground water management;

(2) "Commissioner" means the commissioner of environment and conservation, the commissioner's duly authorized representative and, in the event of the commissioner's absence or a vacancy in the office of commissioner, the deputy commissioner of environment and conservation;

(3) "Department" means the department of environment and conservation;

(4) "Drill" means to dig, drill, re-drill, construct, deepen or alter a well;

(5) "Geothermal well" means a hole drilled into the earth, by boring or otherwise, greater than twenty feet (20') in depth constructed for the primary purpose of adding or removing British Thermal Units (BTU) from the earth for heating or cooling.

(6) "Inactive Well" means any well not in use and does not have functioning equipment, including bailers, associated either in or attached to the well;

(7) "Installer" means any person who installs or repairs well pumps or who installs filters and water treatment devices;

(8) "Log" means a record of the consolidated or unconsolidated formation penetrated in the drilling of a well, and includes general information concerning construction of a well;

(9) "Monitoring well" means a hole drilled into the earth, by boring or otherwise, constructed for the primary purpose of obtaining information on the elevation or physical, chemical, radiological or biological characteristics of the ground water and/or for the recovery of ground water for treatment;

(10) "Person" means any individual, organization, group, association, partnership, corporation, limited liability company, utility district, state or local government agency or any combination of them;

(11) "Water well" means a hole drilled into the earth, by boring or otherwise, for the production of water;

(12) "Well" means one of these three types of holes in the earth: a geothermal well, a monitoring well, or a water well; and

(13) "Well owner" means the person who owns the real property on which a well exists or is to be drilled provided however, in the case of any monitoring or remediation required by the department or the commissioner, the well owner shall be the person responsible for such monitoring or remediation.

SECTION 13. Tennessee Code Annotated, 69-11-102, is amended by deleting it and substituting instead the following:

(a) It is unlawful for any well to be drilled or closed except by licensed individuals. In order to obtain a water well, a monitoring well or a geothermal well driller's license, an individual shall file with the commissioner, on or before July 31 of each year, an application form to be made available by the commissioner, with the following information:

(1) The name under which the individual is doing business in this state;

(2) The office address or principal place of business of the individual; and

(3) Such other information as the commissioner may deem reasonable and necessary.

(b) Each applicant for one of the three types of well driller's license shall submit the required fee to the commissioner with the application. The application fee for each annual license shall be one hundred dollars (\$100.00). The payment of the fee shall be in lieu of any additional state or county privilege tax. Upon finding that the applicant meets all requirements for the license, the commissioner shall issue the license for a period not to exceed one (1) year.

(c) An individual may apply for more than one of the three types of well driller's licenses and may apply for a pump installer and/or water treatment installer license by applying for all licenses desired and paying the required fees.

(d) It is unlawful:

(1) to engage in the business of installing, removing or repairing geothermal wells or water well pumps or drop lines in geothermal wells or water wells; or

(2) to engage in the business of repairing, servicing or installing filters and water treatment devices on geothermal wells or water wells; except if it is done by a licensed individual.

(e) In order to obtain a license to install pumps or to install filters and treatment devices in geothermal wells or water wells, an individual shall annually file with the commissioner, on or before July 31 of each year, an application form made available by the commissioner, with the following information:

(1) The name under which the individual is doing business in this state;

(2) The office address or principal place of business of the individual; and

(3) Such other information as the commissioner may deem reasonable and necessary.

(f) Each applicant for a pump installer and/or a water treatment installer license, shall submit the required annual fee to the commissioner with the application. The application fee for each of these annual licenses shall be fifty dollars (\$50.00). Upon finding that the applicant meets all requirements for the license, the commissioner shall issue the license for a period not to exceed one year.

(g) Each licensee individually shall obtain continuing education credits, as determined by the commissioner and established by rules promulgated under this part, during each twelve-month period beginning on August 1, 2003.

(h) Reciprocity to well drillers and installers licensed in other states will be granted by the department, provided the applicant meets the requirements as required under this part.

SECTION 14. Tennessee Code Annotated, Section 69-11-103, is amended by deleting it and substituting instead the following:

(a) It is unlawful, and a violation of this part, for any person to drill a water well or geothermal well within the state of Tennessee, unless the following provisions are complied with:

(1) The driller of such well shall be licensed as provided in §69-11-102;

(2) The driller shall, at all times during the drilling of such well, keep posted in a conspicuous location, at or near the well being drilled, a copy of the appropriate license; and

(3) The driller of a water well or geothermal well, after the completion of the drilling of each well, shall deliver to the commissioner upon forms to be supplied by the commissioner, a "report of well driller" by a date determined by the commissioner to contain at least the following information:

(A) The name and address of the well owner;

(B) The location of the well;

(C) The date upon which the well was completed; and

(D) The "log" of the well.

(b) The commissioner shall have the authority to inspect, and approve or disapprove based on the requirements of this part, the drilling of any water well or geothermal well, the installation and repair of well pumps or water treatment devices, the installation and repair of all conduits, valves, or other appurtenances which convey water between the well and any building, structure or any water discharge point.

(c) All water wells and geothermal wells shall be drilled, dug, constructed, altered, maintained, and closed in accordance with all standards and requirements established by rules promulgated under this part.

SECTION 15. Tennessee Code Annotated Section 69-11-104 is amended by deleting the section and substituting instead the following new section:

(a) It shall be unlawful to operate or install any equipment in the drilling of geothermal, water or monitoring wells unless a licensed individual, or an operator designated by the licensee, supervises the activity.

(b) It shall be unlawful to install any pumps or water treatment devices in geothermal wells and water wells unless a licensed individual, or an operator designated by the licensee, supervises the activity.

SECTION 16. Tennessee Code Annotated, Section 69-11-105(a), is amended by deleting the language before the colon and substituting instead the following:

(a) A license or operator card may be refused, or a license or operator card duly issued may be suspended or revoked, or the renewal thereof refused by the commissioner, upon a finding that the applicant or holder:

SECTION 17. Tennessee Code Annotated, Section 69-11-105(a), is further amended by adding the following new, appropriately designated subsections:

() Has failed to comply with an order or assessment issued by the commissioner;

() Has been convicted of a felony;

SECTION 18. Tennessee Code Annotated Section, 69-11-106, is amended by adding the following new, appropriately designated subsections:

() Establish standards for installation of pumps and treatment devices, for the proper drilling, construction, maintenance, and closure by well drillers including, but not limited to, the casing, perforating, plugging, cementing, and capping of wells and for maintenance of water wells and geothermal wells by well owners;

() Require corrective action , including closure, of all inactive wells or improperly constructed or maintained wells that have caused or will cause harm to ground water.

SECTION 19. Tennessee Code Annotated, Title 69, Chapter 11, Part 1, is amended by adding a new, appropriately designated section as follows, redesignating existing sections as necessary:

() Notice of Intent to Drill. No water well or geothermal well shall be drilled unless the well owner or the well driller, on behalf of the well owner, has previously notified the commissioner of the intent to drill a well in the manner prescribed by the commissioner. The notice of intent to drill shall include, at a minimum, the name and address of the owner and the location of the well. The fee for the notification shall be submitted by the well owner or the well driller in accordance with the requirements of the rules but no later than the report of well driller pursuant to T.C.A. §69-11-103.

SECTION 20. Tennessee Code Annotated, Section 69-11-107(a)(1), is amended by deleting the phrase "including the commissioner of environment and conservation and the director of water management" and inserting in lieu thereof the phrase "including the commissioner and the director of water supply or their designees."

SECTION 21. Tennessee Code Annotated, Section 69-11-108, is amended by deleting it in its entirety.

SECTION 22. Tennessee Code Annotated, Title 69, Chapter 11, is amended by deleting Section 69-11-109 and substituting instead the following: All funds received by the commissioner under this part shall be used exclusively for the purpose of funding the operation, management and enforcement of the programs under this part.

SECTION 23. Tennessee Code Annotated, Title 69, Chapter 11, Part 1, is amended by adding a new, appropriately designated section as follows:

(a) Any municipality which has adopted home rule under Article 11 Section 9 of the Tennessee Constitution or any county operating under a county charter form of government may enact, by ordinance or resolution respectively, enforceable requirements not less stringent than the standards adopted by the state pursuant to this part.

(b) Any such municipality which has adopted home rule under Article 11 Section 9 of the Tennessee Constitution, any county operating under a county charter form of government or any political subdivision thereunder may be exempted from the provisions of this part except for the well driller licensing and license fee provisions that shall remain as a state function. Any such municipality, county or political subdivision desiring to be exempted from the provisions of this part may file a petition for certificate of exemption with the commissioner. The commissioner shall grant or deny the petition.

(c) The certificate of exemption shall be granted if the commissioner determines that the home rule municipality, or county operating under a county charter form of government, has enacted provisions not less stringent than the provisions of this part and that such enactments are being, or will be, adequately enforced.

(d) The commissioner may grant a certificate of exemption in whole or in part, may prescribe a time schedule for various parts of an exemption to become effective, and may make a certificate of exemption conditional or provisional as is deemed appropriate.

(e) In granting any certificate of exemption, there is reserved to the state the right to initiate proceedings to enforce any applicable resolution, ordinance or regulation of the municipality or county should it fail to obtain compliance therewith. Such proceedings shall be the same as for enforcement of any duly promulgated rule or regulation.

(f) In granting any certificate of exemption, the exemption is to be strictly construed as limited to the language of the exemption. No power or authority which is not expressly stated in the certificate of exemption may be implied.

(g) The department shall frequently determine whether or not any exempted municipality, county or political subdivision meets the terms of the exemption granted and continues to comply with the provisions of this section. If a determination is made that such municipality, county or political subdivision does not meet the terms of the exemption granted or does not comply with the provisions of this section, the commissioner, upon reasonable notice to the municipality, county or political subdivision, may suspend the exemption in whole or in part until such time as the municipality, county or political subdivision complies with the state standards.

(h) All certificates of exemption, including those expiring on the above date, shall be for a fixed term not to exceed five (5) years.

SECTION 24. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 25. This act shall take effect upon becoming a law, the public welfare requiring it.

PASSED: May 22, 2002



JIMMY RAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES



JOHN S. WILDER
SPEAKER OF THE SENATE

APPROVED this 29th day of May 2002



DON SUNDQUIST, GOVERNOR